SUPREME COURT, U.S.

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-920

IN THE MATTER OF THE APPLICATION

of

CHARLES J. O'CONNOR, III,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

IRA APRIL,
Counsel for Petitioner,
850 Broad Street,
Newark, New Jersey, 07102.

Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

IN THE MATTER OF THE APPLICATION

of

CHARLES J. O'CONNOR, III,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

Your petitioner Charles J. O'Connor III, hereby petitions for a writ of Certiorari to review the decision of the New Jersey Supreme Court denying his application for admission to the N. J. State Bar with plenary license and denying his motion to strike the report of the Essex County Committee on Character filed in opposition thereto as being moot despite the following:

1) overwhelming evidence of record of good moral character on the part of the applicant

2) the report of the Essex county Committee on character was prepared and filed after the date on which under applicable Rules of Court the said committee had been abolished and the office ceased to exist

legally it having been replaced by another quasi-judicial administrative entity

Procedural History

By Order of the Supreme Court of New Jersey dated Oct. 19, 1971 the applicant was denied admission to the N. J. State Bar on his petition filed June 29, 1971.

By Order of the Supreme Court of New Jersey dated Oct. 20, 1971 petitioners motion to strike the Report of the Essex County Character Comm. was denied as moot.

No argument was allowed upon either the Petition for Admission nor the motion to strike.

No written opinion was delivered in the case.

Jurisdiction

The Orders from which Writ of Certiorari to review is sought are included in the appendix hereto and dated October 19, 1971 and October 20, 1971.

The statutory provision believed to confer jurisdiction upon this Honorable Court is: 28 USC Sec. 1257 (3).

Questions Presented for Review

I. Whether consistent with the due process clause of the 14th Amendment to the Constitution of the U.S. a state may deny admission to the bar to an applicant on the ground of lack of good moral character having subjected his application to a procedure or process determinative of his character which procedure is neither prescribed nor authorized by the published New Jersey

Rules of Court purporting to be applicable to all such determinations.

2. Whether, upon the applicant's refusal to answer questions put by the Committee on Character seeking the names, docket numbers, nature of the case, nature of the papers filed in the case, which Petitioner, a licensed attorney of the United States Tax Court, had in litigation before a Federal Court at the time, the New Jersey Supreme Court and its Committee on Character had the right to deny petitioner's application for plenary admission to the Bar of the State of New Jersey.

3. Whether the New Jersey Supreme Court had the right to rely upon a report adverse to petitioner's good moral character, which report was prepared and filed after the date on which the said committee, as a legal entity, ceased to exist under applicable New Jersey Law.

Constitutional Provisions Involved

Amendment XIV United States Constitution Section 1 Clause 2

> "... nor shall any state deprive any person of ... property without due process of law ..."

Statement of Facts

On September 28, 1970 Petitioner filed with the Essex County Character Committee, Newark, Essex County, New Jersey, a petition for certification of his good moral character under order of the New Jersey Supreme Court dated November 20, 1969. Attached to the petition was evidence that petitioner is a member of the bar of the U. S. District Court, District of Columbia, since 1956, of the U. S. Tax Court since 1959, of the Ameri-

can Bar Association, is licensed by the Department of Banking and Insurance of the State of New Jersey, by the New Jersey Real Estate Commission and is a Notary Public of the State of New Jersey. Since then, the applicant has been admitted to the bar of the Supreme Court of the United States on February 22, 1971.

The Chairman of the Committee appointed a Sub-Committee to review and act upon Mr. O'Connor's application. The sub-committee interviewed Mr. O'Connor on November 11, 1970 and on March 26, 1971 the Committee advised Mr. O'Connor that it was not prepared to certify him as a person of good moral character.

The Committee has given no reasons for its withholding certification, except that one member assumed at the hearing that because Mr. O'Connor refused to divulge the name of the case being conducted by him before the Tax Court, that Mr. O'Connor was hiding something which adversely affects his character. Neither of the other members of the sub-committee gave any indication as to why they refused to certify the applicant.

There is ample evidence of the good moral character of the applicant and no evidence to the contrary.

On April 1, 1971 the Essex County Character Committee held a hearing which was not attended by the applicant as he had requested no hearing under N.J.R.R. 1:25-3 which gave the option to an applicant to request a formal hearing after a refusal to certify.

On June 29, 1971 petition for admission to the bar with plenary license was filed in N. J. Supreme Court pursuant to N.J.R.R. 1:25-3.

Effective on September 13, 1971 the N. J. Court Rules were amended to abolish all county character committees in the state and replace them with another legal entity.

The Essex County Committee on Character in a report dated September 16, 1971 and filed September 21, 1971, prepared a report adverse to petitioner's character by way of answer to the petition for admission filed by petitioner.

Thereafter, petitioner filed a motion in the Supreme Court of New Jersey to strike the report of September 16, 1971 of the Essex County Committee on Character as being "ultra vires" under applicable N. J. law and cases.

On October 19, 1971 the New Jersey Supreme Court denied the petition for plenary admission to the bar, without opinion, and on October 20, 1971, denied the motion to strike as being moot.

ARGUMENT

POINT ONE

The Essex County Character Committee has violated those procedural rights guaranteed by the N. J. State Constitution and the 14th Amendment to the Constitution of The United States.

A Petition was filed on September 28, 1970 with the Essex County Character Committee pursuant to order of this court dated November 28, 1960. On November 16, 1970 the petitioner received the following letter:

"Essex County
Committee on Character and Fitness
Appointed by the
Supreme Court of New Jersey

David M. Satz, Jr.
11 Commerce Street—Room 2440,
Newark, New Jersey 07102

November 16, 1970

Sherwrn Drobner, Esq.
Bloom and Drobner
12 Mountain Avenue
Springfield, New Jersey 07081

Dear Mr. Drobner:

Francis W. Thomas, Chairman of the Essex County Character and Fitness Committee, has referred the application of Charles J. O'Connor, III to this Sub-Committee, consisting of George Buermann, Donald Coburn and the undersigned, *for review and action.* (Emphasis supplied) It is noted in your letter dated November 11 that Mr. O'Connor's application be considered in time for certification so that if recommended, Mr. O'Connor may be sworn in as an attorney on December 1, 1970.

In order to accommodate your request, our Sub-Committee will hear Mr. O'Connor on Thursday, November 19th at 3:00 P.M. in my office. By telephone, your secretary acknowledged that this date would be suitable according to your calendar. If there are any problems regarding the date, please get in touch with me as promptly as possible.

Sincerely yours,

s/ David M. Satz, Jr."

DMS:ee

cc: George Buermann, Esq.
Donald Coburn, Esq.

This meeting was held on November 11, 1970, and a full transcript thereof reproduced. To date the subcommittee

before which said meeting was held has not complied with the provisions of R. 1:25-3 as to prompt notice of its intention to withhold certification of applicant. Rather, the Committee, by letter dated March 17, 1971 notified applicant of a formal meeting to be held before the full Committee on April 1, 1971. The same stated no reasons for the formal hearing contemplated and advised no objections to certification, no subject matter of inquiry, no charges against the applicant, nor names of witnesses to be heard. Such procedure denies applicant the right to confront any such witnesses and denies him the opportunity to submit evidence as to any point which might be in doubt.

Further the Committee by letter dated March 26, 1971 informed petitioner that:

> "The hearing before the subcommittee did not satisfy the full committee that it could properly certify as to the applicants good moral character."

The same is, in effect, a withholding of certification, as contemplated by the Rules of Court but deviant as to form. It is a reversal of the procedure originally adopted by the committee in its letter on November 16, 1970 by which "review and action" were indicated. This unique procedure now adopted by the committee places on applicant the burden of producing before the full committee in April that which was already produced on the record of November 19, 1970 in contemplation of a decision. Such a needless duplication is an unwarranted delay and is a procedure not countenanced by R. 1:25-3.

There is no doubt that under the then applicable rules of court the subcommittee was fully empowered to act. R. 1:25-1 authorized three man subcommittees.

By former R. 1:25-4, the Board of Bar Examiners was empowered to prescribe rules governing the exact procedures to be used by the various Committees on Character in conducting their hearings. No such rules had been prescribed.

If the respective Committees on Character were therefore, authorized to adopt any procedure at will, to any applicant at random, then the entire process of admission to the New Jersey State Bar violates equal protection of the laws guaranteed by the 14th Amendment to the Constitution of the United States, as there could be 21 different procedures in use at any one time in the various counties multiplied by the total number of applicants in the respective counties.

Since such unbridled discretion may not constitutionally be the contemplated object of Rules of Court pertaining to admission to the Bar, the procedural standard which is obligatory is that minimum standard generally described as "procedural due process of law". *Schware v. Bd. of Bar Examiners*, 353 U.S. 232 (1957).

In this instance the Essex County Character Committee had adopted a most singular procedure, not countenanced by applicable Court Rules, by which a hearing is held for "review and action", no action is taken, certification is withheld, no reasons therefore are given to petitioner, and a further hearing is scheduled and no reasons are offered for holding same.

In subjecting an applicant to this special and peculiar treatment procedural due process of law and equal protection of the law have been denied to him.

POINT TWO

The Essex County Character Committee has violated rights of substantive due process of law guaranteed to the applicant by the Constitution of the State of New Jersey and the 14th Amendment to the Constitution of the United States.

At the formal hearing before the subcommittee held on 11-19-70 the applicant respectfully declined to answer one question put to him and did so sincerely upon a question of privilege, relevance and materiality of the answer. The question sought the name of the case being conducted by applicant before the Tax Court of the United States.

One member of said subcommittee drew therefrom an inference adverse to applicant's moral character, which inference was not only unwarranted by the circumstances but is expressly forbidden on Constitutional grounds under the 14th amendment to the Constitution of the United States. *Konigsberg* v. *State Bar of California*, 353 U. S. 252 (1957). He said (pg. 53, l 17):

* * *

> "Mr. Coburn: I would like to say for the record that just for myself that so long as we do not have the names of these cases, that the only assumption that I can draw is that there is something in those papers or in those cases Mr. O'Connor believes adversely affects his character and I think for his own sake that he (54)* is making a mistake in judgment as to propriety, and I think you would find

---

* All figures in parentheses refer to each new page of the stenographic transcript.

that out if you searched and revealing his client's name, particularly where we are not talking about a private client retained, where there are no corporate proceedings but merely asking for the names and docket numbers of cases that are on file with the tax court, that there is absolutely no breach of ethics on his part in giving the name of his case, and that since there is none in my judgment, unless you can show me different in brief, and I doubt it, but I will be open to seeing it, I must assume that there must be something there that adversely affects his character.

Mr. Drobner: Mr. Coburn, I want you to use your imagination and suggest to me what you might find there that would adversely reflect on his character.

Mr. Coburn: All right, his (55) conduct in that court, the nature of the papers filed, the nature of the case filed.

Mr. Drobner: Conduct in court? Wouldn't that refer to his competency?

Mr. Coburn: No; I am talking about character.

Mr. Drobner: Has he been charged with any violation?

Mr. Satz: We might want to find that out.

Mr. Drobner: You have his certification to the effect that he has not been brought up on charges by the tax court for being overly exuberant.

Mr. Satz: That is something we have to find out in our investigation. All we are trying to do is get basic, plain, simple information. We are not trying to determine, as you said before, who his clients are for the purpose of deciding what they are. We are not (56) trying to find out any inside

information whatsoever on that. We are just trying to see what the situation is generally.

Mr. Drobner: In these tax court proceedings is there anything that you are ashamed of or that you feel would reflect badly on your character if you were to give the names?

The Witness: Certainly not.

Mr. Drobner: Are you under any charges or even under consideration for improper conduct before any of these courts?

The Witness: Certainly not.

Mr. Buermann: Have there been occasions when you have been held in contempt by the tax court?

The Witness: Never."

* * *

The subcommittee indicated for the record the full extent of the line of inquiry they wished to pursue upon the answer to the question put. The same included "the nature of the papers filed, the nature of the case filed." (*supra*).

This would constitute an intrusion into the private affairs of his clients, both past and present. The scope of inquiry suggested is arbitrarily wide, practically without limit, and would certainly have a most chilling effect upon personal privacy, attorney-client privilege, and upon property rights of applicant and his client.

That such an inquiry might be justified is negated by the fact that the applicant has has no complaints or charges filed against him before any court or administrative or licensing body and the same is a matter of record.

Were this caprice to be indulged, and every legal paper, insurance policy issued, paper notarized, and letter written by the petitioner in the last few years be scrutinized

the character investigation contemplated by the Rules of Court would last until the applicants dotage.

The adverse inference illegally drawn as to petitioner's character has tainted the whole proceeding. In the letter of March 26, 1971 it is stated that "The hearing before the subcommittee did not satisfy the full committee * * *". To the extent that any lack of satisfaction on the part of the full committee is based upon such a constitutionally forbidden inference of bad moral character, to that extent the constitutional rights of the petitioner have been violated by the full committee.

In the letter of March 26, 1971, the Committee openly states the standard which it expects the petitioner to meet in order to obtain admission to the New Jersey State Bar:

> "The committee will not make the requisite certification until the committee *feels* it is justified in doing so." (Emphasis supplied.)

This is a standard which *no* applicant can meet. The "feelings" of this committee, or any other committee, are their private concern and are not subject to alteration by the petitioner by any means at all. No facts can convince, no evidence can alter, no plea may prevail against a "feeling".

As a standard it is discriminatory, vague, indefinite and arbitrary. It negates equal protection of the law.

As a standard for admission to the bar it is unconstitutional. *Schware v. Bd. of Bar Examiners, supra, Konigsberg v. State Bar of California, supra, Baird v. State Bar of Arizona*, 91 S. Ct. 702 (1971), *Application of Stolar*, 91 S. Ct. 713 (1971).

POINT THREE

The petitioner, on the record, has sustained the burden of proof as to his good moral character and should be admitted forthwith to the New Jersey State Bar as an attorney with plenary license.

A license to practice law is not a privilege; it is a right. In *Baird v. State Bar of Arizona, supra*, the United States Supreme Court stated:

> "The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character, see Schware v. Bd. of Bar Examiners, 353 U. S. 232 and Ex Parte Garland, 4 Wall 333, 18 L. Ed. 366 (1866). This record is wholly barren of one word, sentence, or paragraph that tends to show this lady is not morally and professionally fit to serve honorably and well as a member of the legal profession." (pg. 707)

Similarly, in *Application of Stolar, supra*, the Ohio Supreme court was directed to issue a license to the applicant upon determination that the information supplied was sufficient to compel admission, i.e., extensive personal and professional information as well as numerous character references to enable the investigating committee to make the necessary determination (page 716).

The record in the case at bar is barren of allegations of bad moral character. Indeed, the Essex County Character Committee has yet to ascribe any reason for withholding certification apart from its enigmatic "feelings."

The record is well documented with evidence indicative of good moral character and high professional and busi-

ness capability. These include a license to practice before the United States District Court for the District of Columbia, United States Tax Court, the United States Supreme Court and membership in the ABA. The petitioner is a licensed New Jersey Real Estate Salesman, an Insurance Broker and a Notary Public. Petitioner secured in advance of and appended to the record of the hearing on November 19, 1970 numerous letters of recommendation, in excess of the number usually called for, from members of the legal profession of high repute and credibility.

At no time have any complaints, charges or inquiries been lodged as to petitioner's professional conduct or capacity in any of his occupations since the date the licenses were originally obtained.

The applicant, further, has fully cooperated with the said committee by obtaining evidence requested of him subsequent to the hearing and submitting the same promptly. The record, viewed on the whole, discloses a full and complete disclosure to the committee of all personal, professional and business data by the applicant, sufficient for the requisite determination.

The standard to apply in such instances is to test the applicant for his ability and moral capacity to function at the particular capacity sought after and not to measure him in a general sense, or in a vacuum. *In re Hiers*, 15 [illegible]. *In re Mathews*, 34 N. J. 250 (1961). *In re Pyatt*, N. J. 382 (1954); *Schlesinger v. Bd. of Bar Examiners*, [illegible] 36 N. J. 401 (1962). *In re Pyatt*, 36 N. J. 146 (1961).

POINT FOUR

Petitioner has been denied due process of law and equal protection of the law by the acceptance of an "ultra vires" report adverse to his good moral character.

The report of the Essex County Character Committee should not have been considered. The jurisdiction of an administrative agency in New Jersey is dependent solely on its enabling legislation. *Nagy* v. *Ford Motor Co.*, 6 N. J. 341 (1951). Similarly an appointee to an office having no legal being has repeatedly been held in New Jersey to have no power to act nor to have color of authority to act. *Haidon* v. *Town of Belleville*, 4 N. J. 99 (1950); *Toomey* v. *McCaffrey*, 116 N. J. L. 364 (1936); *Van Brookhoven* v. *Kennedy*, 125 N. J. L. 178 (1940).

N.J.R.R. 1:25-1 was amended effective September 13, 1971 to abolish all the county Character committees and this rule was supplanted with the following:

> "The Supreme court shall appoint one or more committees on character composed of such number of attorneys as it may determine."

The office having been abolished the report of September 16, 1971 was a nullity and should have been stricken from the record.

In the determination of so serious a matter as the right to practice law the use of an adverse recommendation from parties having questionable authority to act is not moot as set forth by the order of the Supreme Court of New Jersey, dated October 20, 1971.

Furthermore, the record of the hearing of April 1, 1971 is replete with references to a "minority" position admittedly "extreme" to the effect that petitioner's request for certification should be denied because of his reluctance to attend that hearing the holding of which was subject to serious questions as to its legal propriety. The effect of the orders of October 19, 1971 and October 20, 1971 of the Supreme Court of New Jersey was to give majority rule to minority opinion.

CONCLUSION

For the reasons above stated it is respectfully submitted that writ of certiorari to review this matter should be granted by this honorable court.

Dated: January 12, 1972

Respectfully submitted,

Ira Kaplan
Counsel for Petitioner
850 Broad Street,
Newark, New Jersey

APPENDIX

Order of Supreme Court of New Jersey Denying Motion for Plenary Admission

(Filed—October 19, 1971.)

SUPREME COURT OF NEW JERSEY
M-57 September Term 1971

In the Matter of the Application
of
CHARLES J. O'CONNOR, III

This matter having been duly presented to the Court, it is Ordered that motion for plenary admission is denied.

Witness, the Honorable Joseph Weintraub, Chief Justice at Trenton, this 19th day of October 1971.

A True Copy

IRVING B. ZIRCHNER
Acting Clerk

Order of Supreme Court of New Jersey Dismissing Motion to Strike, etc.

(Filed—October 19, 1971.)

SUPREME COURT OF NEW JERSEY
M-75 September Term 1971

In the Matter of the Application
of
CHARLES J. O'CONNOR

This matter having been duly presented to the Court, it is Ordered that motion to strike committee report is dismissed as moot.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this 20th day of October, 1971.

A True Copy

IRVING B. ZIRCHNER
Acting Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

IN THE MATTER OF THE APPLICATION

of

CHARLES J. O'CONNOR, III,

Petitioner.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

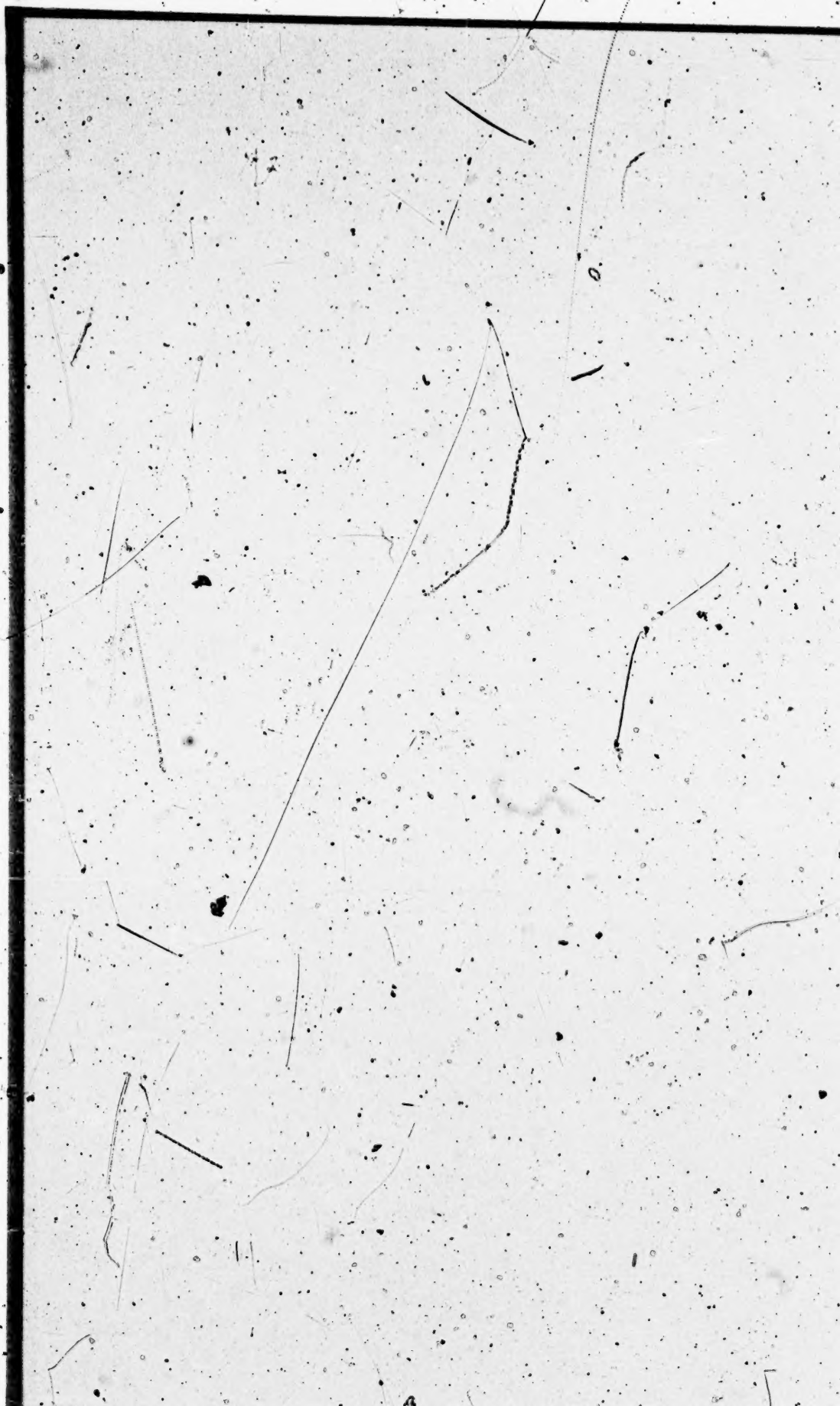
BRIEF IN OPPOSITION

GEORGE F. KUGLER, JR.,
Attorney General of New Jersey,
Attorney for Respondent,
State House Annex,
Trenton, New Jersey 08625

STEPHEN SKILLMAN,
Assistant Attorney General,
Of Counsel,

VIRGINIA LONG ANNICH,
Deputy Attorney General,
On the Brief.

Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12



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New Jersey Court Rules (1971):

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Other Authorities Cited

Jackson, "Character Requirements For Admission to the Bar", 20 Fordham L. Rev. (1951):

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Report of Essex County Committee on Character:

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No.

IN THE MATTER OF THE APPLICATION

of

CHARLES J. O'CONNOR, III,

Petitioner.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

Counter-Statement of Questions Presented

1. Does the action of a duly constituted Character Committee in refusing to certify to an applicant's character, when such action is taken upon notice to the applicant with opportunity to be heard, and the right to object to the bases thereof, deny the applicant any constitutionally guaranteed right?

2. May a bar applicant, whose character and fitness have long been at issue, have certification to his character withheld for refusing to provide the Character Committee with unprivileged answers to material questions, thereby obstructing the investigation of his qualifications?

Counter-Statement of Facts

This is a petition by Charles J. O'Connor, III (hereinafter petitioner) for a writ of certiorari with respect to a final order of the Supreme Court of New Jersey dated October 19, 1971, denying petitioner's motion to strike an unfavorable report of the Essex County Committee on Character and Fitness (hereinafter Character Committee),* and, also denying petitioner's motion for plenary admission to the New Jersey Bar.

Petitioner graduated from Rutgers Law School in June of 1956. On September 28 of that year, he filed a petition with the Supreme Court of New Jersey requesting relaxation of the court rule requiring sixty days' notice of intention to take the Bar examination scheduled for October 30 and 31. On October 18, 1956, at a hearing before a subcommittee of the Character Committee, it was established that petitioner had been arrested on charges of assault, had been requested to withdraw from preparatory school, and had been convicted of numerous motor vehicle violations resulting in the forfeiture of his driving privilege in the State of New Jersey. In view of these circumstances, the Character Committee determined that it was unable to properly evaluate petitioner's fitness for admittance to the New Jersey Bar prior to the commencement of the scheduled examination, and therefore recommended that petitioner be allowed to take the Bar examination, subject to obtaining a satisfactory character and fitness certification at a later date. After suc-

---

* These recommendations of the Character Committee were based upon the entire record of petitioner's previous bar admission proceedings before the Character Committee and before the Supreme Court of New Jersey which dated back to 1956. This extensive record has been certified to this Court by the Supreme Court of New Jersey.

cessfully completing the Bar examination, petitioner entered the Army.

On March 27, 1959, subsequent to his separation from military service, petitioner filed a preliminary statement with the Character Committee for the purpose of effectuating his admission to the Bar. The statement outlined petitioner's prior history of convictions as follows: 1950, careless driving; 1951, stop sign violation; 1953, speeding; 1953, careless and reckless driving; 1958, driving while intoxicated. In addition, the statement reflected that petitioner had been charged on another occasion in 1958 with driving while intoxicated, and had been bound over for the Grand Jury in 1953 for assault and battery. The Character Committee subsequently ascertained that petitioner's driver's license had been revoked in 1953 and restored in 1956, and that his registration was suspended in May 1959 for failure to file proof of financial responsibility in accordance with the motor vehicle statutes.

In October of 1959, the Character Committee contacted petitioner and notified him of its intention to hold hearings to consider applications for certification. Petitioner requested at that time that the Character Committee postpone consideration of his application until he completed his period of clerkship. On November 9, 1959, seven days after completion of his clerkship, petitioner applied directly to the Supreme Court of New Jersey for admission to the Bar, asserting that the Character Committee was biased and prejudiced against him, that he could not obtain an impartial determination from it, and that the Character Committee had been dilatory and incompetent in processing his application and had subjected him to "unbearable personal insult, invective, false accusations, administrative incompetence, undue delay, procrastination and harassment."

On January 4, 1960, the court denied petitioner's motion for admission to the Bar. The court further requested the Character Committee to continue its consideration of petitioner's qualifications and to file with the court a report and recommendation based upon further investigation and formal hearings.

Pursuant to the order, the subcommittee held formal hearings with respect to petitioner's qualifications on February 26 and May 6, 1960. Petitioner attended the hearings with counsel. He appeared evasive with respect to his past motor vehicle record and his work record since leaving the Army. Moreover, although he outlined in detail his participation in the events that led to his 1951 arrest on the assault charge, his version before the subcommittee failed to conform with the version he gave to the State Police at the time of the arrest, which version appeared to show that he had indeed been the aggressor in the incident (R103, May 6, 1960).

On June 17, 1960, the Character Committee forwarded its recommendations to the Supreme Court:

> "When this matter was returned to the Committee, the Committee was primarily concerned with the long list of traffic violations which appeared on Applicant's preliminary statements including conviction for careless and drunken driving. It was hoped that Applicant could show that these were not indicative of his present character. The hearings developed a pattern of behavior on the part of Applicant that appeared to place Applicant constantly in trouble up to the present time and a lack of candor before the Committee. The Committee believes that the 1951 statement of Applicant as to the facts concerning the knife fight in Ocean County was closer to the facts than the Ap-

> plicant's version of the affair as presented at the hearings. There is nothing which this Committee could find in the hearings that indicated any basic change in Applicant's character between 1951 and the present time.
>
> The Committee is unable to certify that Applicant presently has the character and fitness to qualify him for admission to the bar. The Committee assumes that the question of possible future application for certification based upon changed circumstances, is a question for the determination of the Supreme Court." (Report of the Essex County Committee on Character and Fitness dated June 17, 1960).

Petitioner never objected to these findings and recommendations. On November 28, 1960, the Supreme Court of New Jersey ordered that petitioner's application for leave to be sworn as an attorney be denied with leave to reapply to the Character Committee after December 1, 1962.

On February 8, 1963, petitioner reapplied to the Character Committee and on March 8 and April 25 of that year hearings with respect to petitioner's qualifications were again held before the subcommittee, at which time petitioner was again represented by counsel. At the April 25 hearing, testimony was heard from Herman Stern, the Chief of the Claims Section of the Veterans Administration, where petitioner had been employed for four months. He testified about petitioner as follows:

> "As his supervisor noted, the only drawback was a quick and uncontrollable temper which became evident on two occasions that I know of, at least, in the performance of his duties. As a result of

these occasions he summarily left his employment. After the first time, he was rehired. A short time thereafter another situation arose whereby he left his employment again.

* * *

I would like to, if I may, now sum up. In my opinion Mr. O'Connor would have been and could be a most desirable type of individual and employee in our line of endeavor were he able to control his feelings and emotions." (T64, 68, 69, April 25, 1963).

It was also established at the hearing that petitioner had visited another employee of the Veterans Administration three times in an attempt to dissuade him from appearing (T65-66, April 25, 1963). Other specific instances of petitioner's temperamental behavior were testified to, and it was suggested by a member of the subcommittee that psychiatric help might possibly be in order (T113, April 25, 1963). Additionally, it was noted that the Chief Justice of the Supreme Court of New Jersey had previously communicated with petitioner's counsel and determined that petitioner would not voluntarily submit to a psychiatric examination (T113, April 25, 1963). Although petitioner agreed at the hearing to submit himself to a psychiatric examination (T114, April 25, 1963), the record does not indicate that the matter was pursued with petitioner subsequent to the hearing. Petitioner refused both at the March 8 and April 25 hearings to divulge the names of cases he alleged he was handling in the Tax Court. A third hearing date was scheduled for October 3, 1963 but was cancelled when petitioner requested an opportunity to retain new legal counsel. On October 7, 1963 the Character Committee notified petitioner that a hearing date would be fixed when petitioner or his new counsel contacted the Committee.

Not until October 13, 1970, seven years later, did petitioner recontact the Character Committee. At that time he filed a brief and petition for admission to the Bar. On October 16, 1970, the Character Committee forwarded application forms to petitioner's counsel, and on November 11, these application forms were signed and sworn to by petitioner and returned to the Committee. The completed applications disclosed that petitioner was presently licensed as a real estate salesman, insurance broker, and Notary Public of New Jersey, and as an Attorney at Law in Washington, D. C.* It further reflected that on two occasions in 1968 petitioner had been charged with drunkenness, one charge of which was dismissed, while the other resulted in a finding of not guilty.

A hearing was held on November 19, 1970 before a subcommittee of the Character Committee at which time petitioner was again represented by counsel. At that time he testified that he had signed the informational forms filed with the Character Committee in blank in his lawyer's office. In addition, he was not candid as to the actual circumstances and the final disposition of the two 1968 offenses of drunkenness. In terms of these offenses petitioner's testimony was not credible. He denied being intoxicated and alleged that the first time he was arrested in 1968 he had been mugged (T21 November 19, 1970), and the second time he had been injured in an automobile accident (T29-30 November 19, 1970). The police reports submitted by petitioner's counsel did not support this testimony. In addition, petitioner again re-

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* Petitioner has alleged in his brief that since the filing of the petition he has been admitted to practice before this Court. The Supreme Court of New Jersey has no information as to the circumstances surrounding that admission or the facts conveyed by petitioner to satisfy this Court of his qualifications.

fused to divulge to the subcommittee the names and docket numbers of the cases he alleged he was handling before the Tax Court of the United States.

Subsequently, on March 17, 1971, petitioner was notified that he would be heard by the Character Committee as a whole on April 1, 1971. On March 25, 1971, counsel for petitioner objected to this procedure and declined to participate. On March 26, 1971, the Character Committee replied to petitioner's counsel that the hearing before the subcommittee on November 19, 1970 did not satisfy the full Committee that it could properly certify to petitioner's good moral character, and that as a result, the Committee as a whole would have to review the matter. Early on the morning of April 1, 1971 the Chairman of the Character Committee held a lengthy conversation with petitioner's counsel with respect to those aspects of petitioner's application and the November hearing which concerned the Committee (¶12, April 1, 1971; ¶25, Report of the Essex County Committee on Character, September 17, 1971). Petitioner's counsel represented at that time that he would endeavor to communicate with his client. However, neither the Chairman nor the other members of the Character Committee received any further communication from petitioner or his counsel and neither appeared at the hearing.

On September 17, 1971, the Character Committee made its report with respect to petitioner to the Supreme Court. This report noted that the subcommittee had been dissatisfied with certain aspects of the November 19 hearing, specifically petitioner's failure to adequately explain why he was arrested and charged with being intoxicated, after he alleged he had been mugged. Of this the Character Committee concluded that a "victim of a mugging is ordinarily not so treated" (Report of Essex County

Committee on Character, p. 10). The Character Committee further questioned petitioner's refusal to divulge the names of the cases he was handling in the Tax Court, as well as his admission that he had signed and sworn to his statement in blank. As a result of these factors, considered in light of petitioner's lengthy history before the Character Committee and the court, the Character Committee determined that it was unable to certify petitioner at that time, and notified petitioner thereof by the same date. (At least two members of the Character Committee felt that petitioner's willful failure to appear was sufficient not only to refuse certification, but to deny it altogether, but this view was rejected by the majority.)

On October 7, 1971, petitioner, through his counsel, moved before the Supreme Court of New Jersey to have the report of the Character Committee stricken, and also moved for plenary admission to the Bar. On October 19, 1971, the court denied both motions. On January 14, 1971, petitioner filed a petition for a writ of certiorari in this Court.

ARGUMENT

POINT I

The action of the Character Committee recommending the withholding of petitioner's certification afforded petitioner all of the guarantees of the constitution.

Admission to the Bar of the State of New Jersey, like entry into every other state and federal Bar, is dependent upon a showing that the applicant possesses good moral character and fitness requisite for the practice of law.

In re Hyra, 15 N. J. 252 (1954); see Jackson, "Character Requirements For Admission to the Bar", 20 Fordham L. Rev. 305 (1951). Pursuant to the regulatory power vested in it by the New Jersey Constitution (Art. VI, § II, para. 3), the New Jersey Supreme Court has enacted rules governing admission to the practice of law in this State. (R. 1:23-1, *et seq.*; N. J. Court Rules 1971). These rules which were revised as of September 13, 1971, provide *inter alia* for the appointment, by the court, of committees on character (R. 1:25). On September 14, 1971, pursuant to R. 1:25 the New Jersey Supreme Court reappointed and continued in effect the membership of the Essex County Character and Fitness Committee which had existed under the old rules. Thus, on September 17, 1971, when the Character Committee submitted its report with respect to petitioner to the New Jersey Supreme Court, it was, contrary to petitioner's assertions, duly authorized and empowered to do so. Moreover, Rule 1:25-2 which was applicable to proceedings before the Character Committee during the pendency of the petitioner's case clearly authorized the Committee (or its subcommittee) to "investigate" the character of all applicants resident in the county of its jurisdiction. The purpose of this investigation was expressed by the New Jersey Supreme Court in *In re Hyra, supra*:

> "One of the purposes of a character and fitness committee is to determine from interviews and other means at their disposal whether or not in their judgment one desirous of entering into a clerkship leading to the privilege of taking the bar examination has the character, the backbone, the integrity and the moral stamina to make him a good and acceptable member of the bar. Membership in the bar is a privilege burdened with conditions. A good character is one of them and com-

pliance with that condition is essential at the moment of admission." 15 N. J. at 253.

It is respectfully submitted that the kind of investigation contemplated by the Supreme Court of New Jersey in the court rules and delineated in *In re Hyra* was in fact conducted by the Character Committee in the instant case.

In order to place the challenged action of the Character Committee in perspective, it is crucial to note the lengthy history of petitioner before it. As has previously been observed in the counter-statement of facts, petitioner first appeared before a subcommittee of the Character Committee in 1956, at which time questions arose as to his character. Subsequently in 1960, petitioner again appeared at formal hearings before a subcommittee which resulted in the Character Committee's declining to recommend certification because of petitioner's lack of candor and a long history of troublesome behavior including assault, and incidents involving drinking, indicative of poor character. Upon these findings, the Supreme Court of New Jersey denied petitioner admission to the Bar with leave to reapply after December 1962. In 1963, petitioner reapplied and attended two formal hearings before the subcommittee which uncovered his serious temperment problems and brought a suggestion from the Character Committee that petitioner obtain a psychiatric evaluation. Petitioner subsequently postponed the final day of hearing in 1963 and did not recontact the Character Committee for seven years. This, in conjunction with petitioner's failure to obtain a psychiatric evaluation, is the background which faced the subcommittee on November 19, 1970.

At that time, the entire history of the case was reviewed by the subcommittee with petitioner and his coun-

of troublesome incidents and problems with law enforcement which would support and reinforce such a negative application. Where, as here, subsequent interviews with the petitioner in no way ameliorate the pejorative material contained in the application, common sense requires further inquiry prior to final action. Such further inquiry is no basis for an equal protection claim since it results not from unequal treatment of persons similarly situated, but from a very real difference between petitioner's record and that of the average applicant.

Further, petitioner's reliance on a claim of privilege to insulate him against the consequences of his refusal to answer legitimate questions propounded by the subcommittee is unfounded. In this respect, it is well established that the information requested by the subcommittee, to wit, names and docket numbers of cases petitioner alleged he had filed in the Tax Court, are outside the scope of the attorney-client privilege as it exists in New Jersey and elsewhere. *U. S. v. Pape*, 144 F. 2d 778 (2nd Cir. 1944); *cert. den.* 323 U. S. 752 (1956); *In re Small*, 414 F. 2d 295, *Cert. den.* 396 U. S. 905 (1969). As such, petitioner's wilful failure to provide unprivileged answers to questions which have relevance to his qualifications for admission to the bar, are a legitimate basis for the withholding of certification. *Konigsberg v. California*, 366 U. S. 36 (1951). As this Court observed in *In re Anastaplo*, 336 U. S. 82 (1961), it is constitutionally permissible to deny an applicant admission to the practice of law so long as he "refusing to answer material questions, he obstructs a bar examining committee in its proper functions of interrogating and cross-examining him upon his qualifications." 366 U. S. at 88. See also, *Law Students Civil Rights Research Council v. Wadmond*, 401 U. S. 154 (1971). Here, as in *Konigsberg* and *Anas-*

Cohn, petitioner, after consistent warnings by the subcommittee that the materials requested were not privileged and that his failure to disclose them was obstructing the fact finding process, remained adamant. Under the circumstances, the subcommittee's failure to certify him is clearly valid."

Petitioner avers that he sustained the burden of showing his good moral character through his application form and the submission of other licenses and character testimonials and that accordingly the inquiry with respect to his character was required to go no further. Setting aside for a moment the facts that petitioner's character testimonials were obtained from Bar members holding insurance accounts with his family business (T64, 65—November 19, 1970), it is clear that the Character Committee need not accept the evidence submitted by petitioner as final. As this Court observed in *Konigsberg, supra*, after an applicant submits enough evidence of good character to make a *prima facie* case:

> The examining Committee then has the opportunity to rebut that showing with evidence of bad character. *Such evidence may result from the Committee's own independent investigation, from an applicant's responses to questions on his application form, or from Committee interrogation of the applicant himself.* This interrogation may well be of decisive importance for, as all familiar with bar admission proceedings know, exclusion of unworthy candidates frequently depends upon the thoroughness of the Committee's questioning, revealing as it may infirmities in an otherwise satisfactory showing on his part. This is especially so where a bar committee, as is not infrequently the case, has no means of conducting an independent

> investigation of its own into an applicant's qualifications. 'If at the conclusion of the proceedings the evidence of good character and that of bad character are found in even balance, the State may refuse admission to the applicant, just as in an ordinary suit a plaintiff may fail in his case because he has not met his burden of proof. 366 U. S. at 40-42 (emphasis added).

In the final analysis it should be observed that petitioner is, in no sense, precluded from reapplying to the Character Committee and, indeed from obtaining certification in the event that he candidly and openly cooperates in its investigation. This is not a case in which the applicant has in the past committed a base and reprehensible act which would forever preclude his admission on moral character grounds. What has happened here is that petitioner has compounded a basically troublesome record by lack of candor, evasion, recalcitrance, and obstruction of the Character Committee's investigation. The Committee is available now as it has been in the past, to reconsider petitioner so long as he faces his record squarely, and cooperates.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the writ of certiorari should be denied.

Respectfully submitted,

GEORGE F. KUGLER, JR.,
Attorney General of New Jersey,
Attorney for Respondent.

STEPHEN SKILLMAN,
Assistant Attorney General,
Of Counsel.

VIRGINIA LONG-AYNICH,
Deputy Attorney General,
On the Brief.